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No. 427

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1961

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VIRGINIA PETROLEUM JOBBERS ASSOCIATION, *Petitioner*

v.

FEDERAL POWER COMMISSION, *Respondent*

BLUE RIDGE GAS COMPANY, *Respondent*

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**On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit**

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## BRIEF FOR RESPONDENT BLUE RIDGE GAS COMPANY IN OPPOSITION

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October 20, 1961

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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### OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit (Pet. App., pp. 1a-9a) is not yet reported.

## JURISDICTION

The judgment of the Court of Appeals was entered on June 22, 1961. The petition for a writ of certiorari was filed on September 20, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1), 62 Stat. 928.

## QUESTION PRESENTED

Whether the Federal Power Commission properly exercised its discretion in refusing Petitioner's request to compel a witness to testify as an expert for lay witness compensation where Petitioner made no showing of inability to arrange for the voluntary attendance of the witness and to compensate him as an expert witness.

## STATUTES AND RULE INVOLVED

Section 6(c) of the Administrative Procedure Act, 5 U.S.C. 1005(c); Section 14(c) of the Natural Gas Act, 15 U.S.C. 717m(c); Section 15(b) of the Natural Gas Act, 15 U.S.C. 717n(b); and Section 1.23 of the Rules of Practice and Procedure of the Federal Power Commission, 18 C.F.R. 1.23 are set forth in the Brief for the Federal Power Commission in Opposition to the petition (FPC, pp. 2-4).[1]

## STATEMENT OF THE CASE

The case is adequately stated in the Brief for the Federal Power Commission in Opposition to the petition (FPC, pp. 4-5).

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[1] "FPC, p. . ." refers to the Brief for the Federal Power Commission in Opposition to the petition for a writ of certiorari.

## ARGUMENT

Respondent Blue Ridge Gas Company joins in and adopts the argument of the Solicitor General of the United States in his Brief for the Federal Power Commission in Opposition to the petition (FPC, pp. 6-9). Accordingly, Respondent Blue Ridge Gas Company deems it unnecessary to burden this Court with a restatement of that argument.

Additionally, it is deemed important in the public interest to bring to the attention of this Court an aspect of this case collateral to the merits of the question presented by the petition but bearing directly on the purpose for which Petitioner seeks review in this Court of the judgment of the court below. Petitioner took the cynical position in the proceeding before the Federal Power Commission, which is the basis of the judgment of the court below, that it valued its right to intervene in that proceeding primarily as "one of the legal means" available to it "to get all the business" it wants[2] (R., p. 48).[3]

Plainly, Petitioner's purpose in seeking review in this Court, as was its purpose in the proceeding both before the Federal Power Commission and the court below, is to delay as long as possible finality to the judgment of the court below in order to continue Peti-

[2] In fairness, it should be stated that it was Petitioner's counsel who took this cynical position, not Petitioner itself; but it is submitted that Petitioner is subject to the burden of its counsel's statement of Petitioner's purpose in this litigation. Petitioner's counsel in this Court was also counsel for Petitioner in the court below and in the proceeding before the Federal Power Commission that is the basis of the judgment of the court below.

[3] "R., p. . ." refers to the Joint Appendix filed as the record in the court below.

tioner's present monopoly of the fuel market of Rockingham County, Virginia. It is submitted that this Court may properly take into consideration the purpose of Petitioner's seeking review of the judgment of the court below in evaluating the good faith of Petitioner's arguments addressed to the merits of the judgment of the court below.

## CONCLUSION

The decision of the court below is clearly correct, there is no conflict of decisions and there is no important question warranting review by this Court.

For the foregoing reasons, it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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